

FOURTH APPELLATE DISTRICT
DIVISION ONE
JULY 26, 2004

D044082 American Bankers Insurance Company of Florida et al. v. Frank

Upon written request filed by appellant, the appeal is dismissed.

D044611 In re Palmisano on Habeas Corpus

The petition is denied.

**D044531 Anna T. v. Superior Court of San Diego County/San Diego County Health and
Human Services Agency**

The attorney for petitioner Anna T. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

FOURTH APPELLATE DISTRICT
DIVISION ONE
JULY 27, 2004

D044699 Bradley v. Superior Court of San Diego County/People

The petition is denied.

D041472 Sneed et al. v. Saenz

The judgment is affirmed. Irion, J.; We Concur: Benke, Acting P.J, McDonald, J.

D044335 In re James N., a Juvenile

The appeal is dismissed. Aaron, J.; We Concur: McConnell, P.J., Benke, J.

D042542 Dealy v. Fankhauser

The judgment is reversed as to the denial of the request by Linda and the Estate for nonstatutory costs and is otherwise affirmed. The matter is remanded with directions for the trial court to enter an amended judgment awarding Linda and the Estate their nonstatutory costs. McIntyre, J.; We Concur: Nares, Acting P.J., Haller, J.

D044234 In re September A. et al., Juveniles

The appeal is dismissed. McConnell, P.J.; We Concur: Benke, J., Nares, J.

D042873 Minsk v. Kaiser Foundation Hospitals et al.

The judgment is affirmed. Respondents are entitled to their costs on appeal. McIntyre, J.; We Concur: Benke, Acting P.J., Haller, J.

D042540 Payne v. Volume Services America, Inc., et al.

Court convened at 9:35 A. M.

Associate Justice Gilbert Nares designated hearing officer and referee in this matter.

Deputy Clerk: C. Tunnell

Deputy Clerk: D. Moore, recording

CHP Officer: A. M. Paulson #15674

Donna Lynn Foster in Propria Persona

The court continues the hearing of Donna Lynn Foster, CSR # 7698, Official Reporter, present on order to show cause why sanctions should not be imposed pursuant to rule 46.5 of the California Rules of Court and/or why she should not be declared not competent to act as an Official Reporter in any court pursuant to the provisions of Government Code section 69944 for her failure to prepare and file the reporter's transcript in the following case: Patricia Capritta Payne v. Volume Services America, Inc., et al., D042540

Court marks and receives additional exhibits as follows:

Court's Exhibit 9 - Request for Transcripts (August 15, 2004)

Court's Exhibit 10 - Reporter's Request for Extension of Time (30 days) (filed-stamped
October 20, 2004 by Court of Appeal)

Court's Exhibit 11 - Reporter's Request for Extension of Time (60 days) (filed-stamped
November 19, 2004 by Court of Appeal)

Court's Exhibit 12 - Case# D039828 Dan Shook et al. v. Regents of the University of
California et al. Docket Sheet; Request for Transcripts (April 24, 2002);

FOURTH APPELLATE DISTRICT

DIVISION ONE

JULY 27, 2004 (Continued)

D042540 Payne v. Volume Services America, Inc. et al.

(Case continues)

Reporter's Request for Extension of Time (30 days) (file-stamped June 26, 2002); Reporter's Request for Extension of Time (45 days) (file-stamped July 29, 2002); Reporter's Request for Extension of Time (45 days) (file-stamped September 13, 2002); Reporter's Request for Extension of Time (30 days) (file-stamped October 28, 2002); Default Letter to CSR Donna Foster (December 2, 2002); Request for Reconsideration (Denied) (file-stamped December 2, 2002); Request for Transcripts (August 4, 2003); Appellant's Notice Requesting Inclusion of Omitted Material in Reporter's Transcript on Appeal (file-stamped August 4, 2003); Reporter's Request for Extension of Time (30 days) (file-stamped August 21, 2003); Order of Court of Appeal to Decertify Record (dated August 21, 2003)

Court's Exhibit 13 - Order to Show Cause as to Why Sanctions Should Not Be Imposed for Failure to Perform Duties of a Court Reporter filed June 4, 2004 by the Court of Appeal

Respondent's Exhibit E - Memorandum to Justice Nares from Lana Fruke, superior court operations manager, dated July 21, 2004 with Exhibits A-E:

Exhibit A - Calendar for May 28, 2004

Exhibit B - Civil Daily Availability List dated May 28, 2004

Exhibit C - Employee Attendance Query Results (Donna Foster - 1/1/04-7/21/04)

Exhibit D - Memorandum to Justice Nares from Elizabeth Neal, superior court administrative clerk dated July 22, 2004

Exhibit E - 8 defaults letters to CSR Donna Foster from Court of Appeal dated August 25, 2003, DCA #D042075; September 10, 2003, DCA #D042702; October 1, 2003, DCA #D042529; October 1, 2003, DCA #D041383; November 6, 2003, DCA #D042655; March 23, 2004, DCA #D043455; April 15, 2004, DCA #D043422; May 19, 2004, DCA #D042540

Respondent's Exhibit F- Designation of the Record on Appeal (filed-stamped July 22, 2003 by superior court) (received from superior court appeals clerk Greg Hohman)

Respondent's Exhibit G- Amended Designation of the Record on Appeal (filed-stamped July 31, 2004 by superior court) (received from superior court appeals clerk Greg Hohman)

Respondent's Exhibit H - Reporter's Waiver of Deposit (filed-stamped August 12, 2003 by superior court) (received from superior court appeals clerk Greg Hohman)

FOURTH APPELLATE DISTRICT

DIVISION ONE

JULY 27, 2004 (Continued)

D042540 Payne v. Volume Services America, Inc. et al.

(Case continues)

Respondent's Exhibit I - Respondent's Designation of Additional Proceedings for Reporters' Transcripts (filed-stamped August 12, 2003 by superior court) (received from superior court appeals clerk Greg Hohman)

Respondent's Exhibit J - Notice to Prepare Omitted Portions of Reporter's Transcript (filed-stamped March 9, 2004 by superior court) (received from superior court appeals clerk Greg Hohman)

Respondent's Exhibit K - Memorandum to Justice Nares from CSR Donna Foster dated July 22, 2004 with Exhibits A-H:

Exhibit A - Original Leave Slips dated 4/27/04

Exhibit B - Leave Requests signed by E. Neal

Exhibit C - Copies of June 1 and 2, 2004 Availability List

Exhibit D - Copies of six default letters with accompanying documents

Exhibit E - Copies of four Request for Transcripts

Exhibit F - Leave Request re: fire

Exhibit G - Leave requests dated June 8 and June 9 with note by Ms. Fruke

Exhibit H - Letter of Ms. Robin Smith

Respondent's Exhibit L - Supplemental Memorandum from Lana Fruke, superior court operations manager dated July 23, 2004

Respondent's Exhibit M - Letter from Mary A. Ybanez, courtroom clerk to Judge Kevin Enright in support of CSR Foster (received via facsimile on July 23, 2004)

9:40 Donna Lynn Foster, Court Reporter, previously sworn, is recalled to testify.

9:41 Robin Smith, Independent Calendar Clerk, Dept. 63, is sworn and examined.

9:45 Donna Lynn Foster, Court Reporter, is recalled to testify. 10:00 Jill Amanda Matuk, Senior Deputy Clerk, Court of Appeal, previously sworn, is recalled to testify.

10:01 Donna Lynn Foster, Court Reporter, is recalled to testify.

10:07 Jill Amanda Matuk, Senior Deputy Clerk, Court of Appeal, is recalled to testify

10:13 Donna Lynn Foster, Court Reporter, is recalled to testify

10:16 Mary Ann Ybanez, Court Clerk, Department 63, sworn and examined

10:20 Donna Lynn Foster, Court Reporter, is recalled to testify.

10:25 Elizabeth Neal, Court Administrative Clerk, sworn and examined.

10:35 Donna Lynn Foster, Court Reporter, is recalled to testify.

10:38 Greg Hohman, Appeals Clerk superior court, previously sworn, is recalled to testify.

10:48 Laura Runyon, Court Reporter Supervisor, Criminal Operations, sworn and examined.

11:05 Donna Lynn Foster, Court Reporter, cross-examined Laura Runyon, Court Reporter Supervisor.

11:08 Donna Lynn Foster, Court Reporter, is recalled to testify.

11:12 Laura Runyon, Court Reporter Supervisor, Criminal Operations, is recalled to testify.

11:14 Donna Lynn Foster, Court Reporter, is recalled to testify.

11:15 Laura Runyon, Court Reporter Supervisor, Criminal Operations, is recalled to testify.

11:16 Donna Lynn Foster, Court Reporter, is recalled to testify.

11:17 Sharon Fujikawa, Director of Civil Operations, previously sworn, is recalled to testify.

Court will prepare written findings and recommendations to be submitted to the Justices of this Court.

Court adjourns at 11:25 A. M.

FOURTH APPELLATE DISTRICT
DIVISION ONE
JULY 27, 2004 (Continued)

D044576 Rollins v. Superior Court of San Diego County/MJB Development Group et al.
The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
JULY 28, 2004

D044609 Prewitt v. Superior Court of San Diego County/Morrow et al.

The petition is denied.

D044730 Alvarez v. Superior Court of San Diego County/The People

The petition is denied.

D043364 In re Zachary W. et al., Juveniles

D043685 In re Zachary W. et al., Juveniles

(Consolidated) The orders are affirmed. The petition for habeas corpus is denied. McDonald, J.; We Concur: McConnell, P.J., McIntyre, J.

D043920 In re Samantha J., a Juvenile

The dispositional order is affirmed. The portion of the appeal challenging the order for paternity testing is dismissed. Benke, Acting P.J.; We Concur: Nares, J., Haller, J.

D042664 In re R.R., a Juvenile

The judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J., Nares, J.

D043751 In re M.H., a Juvenile

The January 28, 2004 order from the 18-month review hearing is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Haller, J.

D044181 In re K.D., a Juvenile

The appeal is dismissed. McIntyre, J.; We Concur: McConnell, P.J., Nares, J.

D043592 Pitzen v. Superior Court of San Diego County/Garcia

Let a writ of mandate issue ordering the superior court to: (1) vacate its order overruling Pitzen's demurrer to Garcia's cross-complaint and (2) enter a new order sustaining, without leave to amend, Pitzen's demurrer to Garcia's cross-complaint. The stay issued by this court on January 23, 2004, is vacated. CERTIFIED FOR PUBLICATION. Aaron, J.; We Concur: Huffman, Acting P.J., Nares, J.

D043333 In re Destiny P., et al., juveniles

Cause called on merits. Julie Braden, Esq. argued for appellant, Michelle P. Joanne Willis Newton, Esq. argued for appellant, Pala Band of Mission Indians. Debra Barringer, Deputy County Counsel argued for respondent. M. Elizabeth Handy, Esq. argued for Destiny P. and Rogelio. Joseph Tavano, Esq. argued for Michael M. Cause submitted.

D044744 Scripps Health v. Superior Court of San Diego County/Perkins

The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
JULY 29, 2004

D044623 Quadalupe K. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Quadalupe K. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D044584 In re Thompson on Habeas Corpus

The petition is denied.

D044384 Grijalva v. EDCO Waste & Recycling Services, Inc., et al.

Pursuant to California Rules of Court, rule 8, the appeals filed June 2, 2004 and June 14, 2004, are dismissed for failure of appellant to timely deposit costs for preparing the record on appeal (Cal. Rules of Court, rule 4(b) and 5(c)).

D044384 Guardianship of Madilyn H., a Minor

Pursuant to California Rules of Court, rule 8, the appeal filed May 18, 2004 is dismissed for appellant's failure to timely designate the record. (Cal. Rules of Court, rule 4(a) and 5(a)).

D044473 City of San Diego v. Workers' Compensation Appeals Board/Barker

The petition is denied.

D044614 In re Bell on Habeas Corpus

The petition is denied.

D043689 In re Cynara D., a Juvenile

Orders affirmed. McDonald, J.; We Concur: Haller, Acting P.J., McIntyre, J.

D043310 People v. Romero

Upon filing a written abandonment of appeal, the appeal is DISMISSED and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

D044617 People v. WWW.DIRTCHEAPCIG.COM, Inc.

The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
JULY 30, 2004

D044704 Jamshidi v. Superior Court of San Diego County/Macropore Biosurgery, Inc.
The petition is denied.

D044253 Tomi W. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency
The petition is denied. Haller, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D043178 Medical Staff of Sharp Memorial Hospital et al. v. Superior Court of San Diego County/Pancoast
Let a writ of mandate issue directing the superior court to vacate its order of July 2, 2003, and to conduct such other further proceedings as are necessary and consistent with the views we have expressed. Petitioners to recover their costs in this writ proceeding. CERTIFIED FOR PUBLICATION
Benke, Acting P.J.; We Concur: Huffman, J., Nares, J.

D043241 Barratt American Inc. v. D.R. Horton San Diego Holding Co., Inc.
The judgment is affirmed. McConnell, P.J.; We Concur: Haller, J., McIntyre, J.

D044356 In re D.L., et al. Juveniles
The appeal is dismissed. Huffman, J.; We Concur: McConnell, P.J., McDonald, J.

D044194 N.S. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency
The petition is denied. Aaron, J.; We Concur: McConnell, P.J., McDonald, J.

D044620 Reed v. Superior Court of San Diego County/Navarro
The petition is denied.

D044647 Gamble et al. v. Superior Court of San Diego/Verduzco et al.
The petition is denied.

D044697 Ordonez on Habeas Corpus
The petition is denied without prejudice to refiling in the proper court.

D044767 People v. Baker
The appeal is dismissed.

D044690 East County Investigations v. Lacher
An order denying a third party claim of exemption in a small claims action is not appealable in this court. The appeal is dismissed.

D044648 Orderica et al. v. Superior Court of San Diego County/Ronquillo et al.
The petition is denied.